

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

vs.

HEBER URIEL NEVAREZ,
Defendant.

MEMORANDUM DECISION AND
ORDER GRANTING THE
GOVERNMENT’S MOTION FOR
REVOCATION OF ORDER OF
RELEASE PENDING TRIAL,
PURSUANT TO 18 U.S.C. §§ 3142
AND 1345(a)(1)

Case No. 2:07-CR-160 TS

This matter came before the Court on April 24, 2007, for hearing on the Government’s Motion for Revocation of Order of Release Pending Trial,¹ brought pursuant to 18 U.S.C. § 3145(a)(1), which was filed April 23, 2007. The Court, having reviewed the pleadings and the file, having heard argument of counsel at the hearing, and being otherwise fully informed, will grant the government’s Motion, reverse the order of the magistrate judge, revoke the order of release, and order that an arrest warrant for Defendant issue, as set forth below.

¹ Docket No. 14.

BACKGROUND

On March 7, 2007, a 10-count Indictment was filed against Juan de Jesus Lopez and Heber Uriel Nevarez in this case. Defendant Nevarez was named in Counts 3, 4, 9, and 10, charged with bank fraud and aggravated identity theft. Co-defendant Lopez was arrested, and appeared before Magistrate Nuffer on April 5, 2007. He is set for a three-day jury trial on June 11, 2007, before this Court.

Defendant Nevarez was arrested on April 23, 2007, in California. The information before the Court is that, on that same day, U.S. Magistrate Judge Wayne Brazil, in the Northern District of California, ordered the Defendant's release under 18 U.S.C. § 3142 on his own recognizance (to the custody of his girlfriend/common-law wife) and imposed conditions of release, including an unsecured \$50,000 appearance bond. The government appeals to this original court of jurisdiction under 18 U.S.C. § 3145(a)(1).

DISCUSSION

DUCrimR 57-16(a)(1) provides that "[a]ny party is entitled to appeal a magistrate judge's order releasing or detaining a defendant under 18 U.S.C. §§ 3142 et. seq. The appeal will be a timely scheduled de novo review by the assigned district judge."

The Court notes that, as a general rule, the presumption lies in favor of release of a defendant, unless certain other factors are present that make release of the defendant unsafe or impractical. Subsection (g) to § 3142 sets forth factors the Court is to consider "in determining whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community." Those factors include the nature and circumstances

of the charged offense, the weight of the evidence, the history and characteristics of the person, and the nature and seriousness of the danger posed by the person to the community upon release.

Based upon the evidence before the Court, and having reviewed the magistrate judge's detention order *de novo*, the Court finds that Defendant poses a significant risk of flight. In considering the factors set forth above, the Court considered the very serious nature and circumstances of the charged offense, and the apparently significant weight of the evidence in support thereof. Considering the history and circumstances of the person, the Court finds most significant that Defendant has already absconded from the State of Utah, and there is an active warrant out for his arrest, as supported by the Pretrial Services Report. The government represented that, at the time of his arrest on April 23, 2007, Defendant was driving a vehicle which had been reported stolen, based upon a fraudulent purchase using the name and social security number of another person. These factors rebut the presumption of release in this case.

CONCLUSION


Therefore, based upon the above, it is hereby

ORDERED that the Government's Motion for Revocation of Order of Release Pending Trial, pursuant to 18 U.S.C. § 3145(a)(1) (Docket No. 14) is GRANTED. The Order Setting Conditions of Release and Appearance Bond issued by Magistrate Brazil in the Northern District of California is REVERSED, Defendant's release is REVOKED, and an arrest warrant for Defendant shall issue forthwith. The government is directed to immediately bring Defendant before this Court upon his return to the District of Utah.

SO ORDERED.

DATED this 26th day of April, 2007.

BY THE COURT:



TED STEWART
United States District Judge